

ARKANSAS
ANNUAL SYNAR REPORT

42 U.S.C. 300x-26

OMB № 0930-0222

FFY 2004



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
Center for Substance Abuse Prevention
www.samhsa.gov

INTRODUCTION

The Annual Synar Report format provides the means for States to comply with the reporting provisions of the Public Health Service Act (42 U.S.C. 300x-26) and the Tobacco Regulation for the SAPT Block Grant (45 CFR Part 96).

Public reporting burden for this collection of information is estimated to average 30 hours for questions 1 through 8 for Section I and 3 hours for Section II, including the time for reviewing instructions, completing and reviewing the collection of information, searching existing data sources, and gathering and maintaining the data needed. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to SAMHSA Reports Clearance Officer; Paperwork Reduction Project (0930-0222); Room 16-105, Parklawn Building; 5600 Fishers Lane, Rockville, MD 20857.

An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930-0222 with an expiration date of 7/31/2004.

How the Synar report helps the Center for Substance Abuse Prevention

In accordance with the tobacco regulations, the States are required to provide detailed information on progress made in enforcing youth tobacco access laws (FFY 2003 Compliance Progress) and future plans to ensure compliance with the Synar requirements to reduce youth tobacco access rates (FFY 2004 Intended Use Plan). These data are required by 42 U.S.C. 300x-26 and will be used by the Secretary to evaluate State compliance with the statute. Part of the mission of the Center for Substance Abuse Prevention (CSAP) is to assist States¹ by supporting Synar activities and providing technical assistance helpful in determining the type of enforcement measures and control strategies that are most effective. This information is helpful to CSAP in improving technical assistance resources and expertise on enforcement efforts and tobacco control program support activities, including State Synar Program support services through an enhanced technical assistance program involving conferences and workshops, development of training materials and guidance documents, and on-site technical assistance consultation.

How the Synar report can help States

The information gathered for the Synar report can help States describe and analyze substate needs for program enhancements. These data can also be used to report to the State legislature and other State and local organizations on progress made to date in enforcing youth tobacco access laws. Aggregated together, statistical data from State Synar reports can demonstrate to the Secretary the national progress in reducing youth tobacco access problems. This information will also provide Congress with a better understanding of State progress in implementing Synar, including State difficulties and successes in enforcing retailer compliance with youth tobacco access laws.

¹The term State is used to refer to all the States and territories required to comply with Synar as part of the Substance Abuse Prevention and Treatment Block Grant Program requirements (See 42 U.S.C. 300x-64 and 45 C.F.R. 96.121).

Getting assistance in completing the Synar report

If you have questions about programmatic issues, you may call the Division of State and Community Systems Development at (301) 443-0326 and ask for your respective State Synar Project Officer or contact the State Synar Project Officer directly by telephone or e-mail using the directory provided (see Appendix).

Where and when to submit the Synar report

The Annual Synar Report (ASR) must be received by SAMHSA not later than **December 31, 2003**. The ASR must be submitted in the **approved OMB report format**. Use of the approved format will avoid delays in the review and approval process.

Submit one signed original of the report, two additional copies, and an electronic version on either CD-ROM or 3.5" diskette to the Grants Management Officer at the address below:

Ms. LouEllen M. Rice, Grants Management Officer
Office of Program Services, Division of Grants Management
Substance Abuse and Mental Health Services Administration

Regular Mail:

Rockwall II Bldg., Suite 630
5600 Fishers Lane
Rockville, Maryland 20857

Overnight Mail:

Rockwall II Bldg., Suite 630
5515 Security Lane
Rockville, Maryland 20852

State Law Regarding Sale of Tobacco Products to Individuals Under Age of 18 (Section 1926):

An agreement to continue to have in effect a State law that makes it unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18; and, to enforce such laws in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under age 18 (See 42 U.S.C. 300x-26 and 45 C.F.R. 96.130).

SECTION I

FFY 2003 (Compliance Progress):

42 U.S.C. 300x-26 of the Public Health Service Act requires certain information regarding the sale/distribution of tobacco products to individuals under age 18.

1. Describe any changes or additions to the State tobacco statute relating to 42 U.S.C. 300x-26 since the last application. Attach a photocopy of the changes and describe the impact they will have on enforcement of State tobacco law(s).

ARKANSAS RESPONSE:

The Arkansas Legislature passed Act 846 on March 27, 2003, taking effect on July 1, 2003. This Act removed the specific guidelines on the size and placement of signs indicating that tobacco sales to minors were illegal. Now, almost any sign placed anywhere in the store will suffice. Merchants are not required to have signs at each register as before. Attached is both a copy of Act 846 and Arkansas Code § 5-27-227 (2003).

The change in signage should have no direct impact on the Synar program, but may make it more difficult for the AR Tobacco Control Board (ATCB) to cite an establishment for sign violations and will make the issue of underage sales less visible to the general public.

The Arkansas Legislature also passed Act 38 of the First Extraordinary Session of 2003 on May 8, 2003, which added a twenty-five cent per pack excise tax on cigarettes and seven percent increase on all other tobacco products. This Act increased the excise tax to fifty-nine cents per pack, making Arkansas' tax rate higher than any surrounding state. The higher cost of cigarettes should make it harder for minors to afford them, thus reducing youth access to cigarettes. With the additional tax, it is also anticipated that more cigarettes will be smuggled into Arkansas and sold on the black market possibly to minors. Therefore, the net result of this act remains to be seen. A copy of Act 38 is attached.

No changes were made in the State regulations related to youth access during the past FFY. There were no tobacco-related changes in local ordinances during the past FFY.

2. Describe how the annual report required under 45 C.F.R. 96.130(e) was made public within the State, along with the State Plan as provided in 42 U.S.C. 300x-51.

ARKANSAS RESPONSE:

The procedure to make the annual Synar report public within the state is by distributing it for review and comment as part of the State's Block Grant application.

It is also available for review by individuals and groups requesting access to it. The report is shared on an annual basis with the ATCB and the Regional Prevention Resource Centers (PRC) for placement in the PRCs' libraries. In addition, the Arkansas Tobacco Prevention & Education Plan contains the results from the Synar report.

ADAP is currently in process of developing a web page for the DHS web site and plans to include a posting of the annual Synar results.

3. Identify the agency or agencies designated by the Governor for the implementation of the requirements. Identify the State agency responsible for conducting random, unannounced inspections. Identify the State and/or local agency or agencies that are responsible for enforcing the tobacco access law(s) (See 42 U.S.C. 300x-26 and 45 C.F.R. 96.130).

ARKANSAS RESPONSE:

The state agency designated by Section 1926 of the Public Health Service Act to implement the Synar requirements is the AR Department of Human Services, Division of Behavioral Health Services, Alcohol and Drug Abuse Prevention (ADAP), under the direction of Joe M. Hill (501-686-9871). On July 1, 2003, ADAP was legislatively transferred from the AR Department of Health to the AR Department of Human Services, Division of Behavioral Health Services. ADAP continues to work with the AR Department of Health's Center for Health Statistics (CHS) and Office of Tobacco Prevention & Education (TPE). CHS coordinates the Synar inspections through a memorandum of agreement with ADAP. TPE coordinates various activities that have impact potential on the underage sales of tobacco. TPE is funded primarily through the Centers for Disease Control and Prevention to reduce the burden caused by tobacco. Goals for the TPE during the year 2003 cycle are to: (1) prevent tobacco initiation among youth; (2) promote quitting among adults and youth; (3) eliminate exposure to second-hand smoke; (4) identify and eliminate disparities among special populations.

ADAP utilizes our thirteen Regional Prevention Resource Centers (PRCs) to implement the Synar inspection process at the direction of CHS. The PRCs are responsible for recruiting, training, and accompanying youth volunteers who actually conduct the random, unannounced inspections. The PRCs document and submit the results of the inspections to CHS for processing and data analysis.

The Arkansas Tobacco Control Board (ATCB), directed by Charlie Davis (501- 682-9756), is responsible for enforcing the tobacco access laws in the state.

4. Describe briefly the coordination and collaboration that occurs between your State's Tobacco and Health Office (Association of State and Territorial Health Officials) and Single State Authority for Substance Abuse (NASADAD). Discuss how State efforts to reduce youth access to tobacco relate to other tobacco control and prevention initiatives in your State.

ARKANSAS RESPONSE:

ADAP is the agency responsible for both the SAPT and implementation of the Synar Regulation. Through a memorandum of agreement (MOA), ADAP purchases support for coordinating the technical aspects of the Synar effort from the AR Department of Health's Center for Health Statistics (CHS).

Effective July 1, 2003, Alcohol and Drug Abuse Prevention (ADAP) was transferred from the Department of Health (ADH) to the Department of Human Services (DHS). The Director of ADH is the state's designated representative to the Association of State and Territorial Health Officials. The Director of ADAP is the state's designated representative to NASADAD. Although ADAP was transferred out of ADH, ADAP continues our working relationship with ADH on the issue of underage access to tobacco both with CHS and with Tobacco Prevention and Education (TPE). TPE is responsible for oversight of the Master Tobacco Settlement and the prevention efforts funded by those monies. In recognizing the need for on-going coordination, an interagency Committee has recently been formed to address planning and assure collaboration among the agencies responsible for prevention of underage use of tobacco. This Committee is made up of representatives from ADH's TPE and Minority Health, the Department of Education, and ADAP.

All ADAP grantees, both Prevention and Treatment, commit in the assurances of their grants to assist the PRCs in the Synar effort if requested. This could mean providing an adult to drive the youth to conduct inspections, identifying appropriate youth, etc.

The Arkansas Tobacco Control Board (ATCB) is responsible for enforcement of the underage sales of tobacco to youth. TPE provides funding to ATCB from the Master Tobacco Settlement to assist in this effort.

ADAP and Arkansas Tobacco Control Board (ATCB) have a positive working relationship. It was because of the Synar requirements for vending machine inspections, that ATCB implemented a requirement effective July 1, 2001 for owners to identify the location of their vending machines. As a result of this action, we now have known locations of vending machines, which make our Synar inspection process much simpler. ADAP and ATCB are in process of collaboratively developing a merchant education package.

A representative from both ADAP and CHS attended the annual Synar meeting in San Diego. In addition, ADAP supported costs for a representative from ATCB to participate in this meeting. ATCB staff also attended the annual Synar training provided to the PRCs by ADAP/CHS. ATCB notifies ADAP when scheduled hearings include underage sales violations so that ADAP staff can plan to attend. Our presence as an "interested outside party" appears to have a marked impact on the Board's decisions regarding dispensation of the violations.

5. In 2-3 pages, list and describe all the State's activities to enforce the State youth access to tobacco law(s) in FFY 2003. Such activities may include statewide and/or targeted enforcement activities.
 - If enforcement of youth access laws is carried out by local law enforcement agencies, provide a detailed summary of local enforcement activities to verify the enforcement is taking place.
 - Include an estimate of the number and types of penalties that were imposed for violation of access laws and policies, and whether these penalties were assessed against owners, clerks, or youth. Examples of penalties include citations, warning letters, public listing of violators, etc.
 - Provide a summary of the final disposition of citations. Example(s) of final disposition include fines that were assessed and collected, licenses that were suspended or revoked, dismissals, etc.
 - Describe additional activities conducted to support enforcement and compliance with State tobacco access law(s). Additional activities may include merchant education, community education, media use, and community mobilization by statewide and/or local community-based coalitions and/or other State agencies.

ARKANSAS RESPONSE:

The State of AR does not combine law enforcement with the Synar survey.

The primary agency responsible for enforcement activities in Arkansas is the Arkansas Tobacco Control Board (ATCB). This agency reports directly to the

Governor. Greg Sled, Enforcement Supervisor for ATCB, attended the Synar Regional Meeting in San Diego. We have knowledge that some city police forces, particularly in Fayetteville and Little Rock, also enforce the tobacco law but we do not have any systematic records of these activities.

ATCB conducts inspections and compliance monitoring of tobacco retail outlets throughout the state under the following situations: as a convenience to the investigator(s); as a follow-up to reported violations; and as an official inspection. Information on violations occurring from the Synar inspections are passed on to ATCB and treated as other reported violations.

Graduated fines/penalties are subject to be imposed on any person or merchant who is selling, giving or distributing tobacco to a minor. Act 1951 allows the Arkansas Tobacco Control Board to levy fines as well as suspension of tobacco permits for businesses determined to be selling tobacco to minors. Fines to merchants are as follows: 1st violation is up to \$250; 2nd is up to \$500 and 2 day suspension of the permit; 3rd is up to \$1,000 and 7-day suspension of the permit; 4th is up to \$2,000 and 14-day suspension of the permit; and 5th offense can be up to \$2,000 and revocation of permit. All counts of violations cover a 48-month period. Provisions allow merchants to present affirmative defenses. Notification of vendors, even if no enforcement effort is involved, has also occurred. Local law enforcement offices can also issue fines to stores and clerks for illegal sales.

During State Fiscal Year 2003 (July, 2002-June, 2003), ATCB conducted 2060 Underage Compliance Checks that resulted in 441 violations and the collection of over \$100,000 in fines. Two agents were added to the ATCB enforcement team in June 2002, resulting in approximately 10 times more inspections, violations, and fines than the previous year. In June of 2003, six more agents were hired so that all areas of the state will be covered. Unfortunately, the record keeping system that allows extraction of the details of the number of first offenses, second offenses, warnings issued, fines collected, etc. has been overwhelmed by the increased volume and such information is not available this year.

Although some local police are known to conduct activities to enforce youth access laws in their cities, we have no records of the number of inspections conducted, violations recorded, or fines collected.

The Regional Prevention Resource Centers are required to provide merchant education in their regions to assist with reducing sales of tobacco to underage

youth. Also, each region may choose to have the list of merchants who did not sell to youth during the Synar checks reported in their local paper to recognize and congratulate those who were in compliance with the law.

The American Cancer Society in Arkansas is active with community mobilization, education, and network with ADAP and PRC staff. They provide training in the Communities of Excellence in Tobacco Control. In addition, through the MSA, Tobacco Prevention Education supports various grants for local prevention efforts and ADH's Hometown Health Initiative is coordinating and promoting local tobacco prevention coalitions throughout the state of Arkansas.

The statewide media activities include paid print, radio and television advertising on topics involving the dangers of tobacco use, second-hand smoke and promotion of the tobacco cessation telephone line. The paid advertising targets both youth and adult audiences. Other media activities include press releases, radio/television news stories, editorials and event sponsorships (state and county fairs and other county festivals).

The community-based coalitions' media activities include print and radio advertising, letters to the editor and press releases on topics involving the dangers of tobacco use and second-hand smoke as well as promotion of local tobacco cessation resources. A small percentage has done some local television advertising and/or local news stories.

The Arkansas Department of Health funded 34 community program grants to develop and implement local tobacco control and prevention activities in SFY 03. The community program grants recipients' primary goals are to build/enhance coalitions with diverse partners, create tobacco-free environments, reduce youth access, and decrease advertising/promotion of tobacco products and promoting utilization of cessation resources.

The formation of support through local coalitions and local action have occurred in the 5 public health regions of Arkansas--Northwest, Northeast, Central, Southwest, and Southeast regions; and includes 49 of the 75 counties in Arkansas. All leaders and members of each coalition within the 5 public health regions have attended conferences and statewide educational trainings in tobacco prevention, and have received extensive information regarding the four goal areas. Many of the coalitions have a tobacco program coordinator and qualified staff members to ensure that the activities in their work plans are achieved.

Some of the coalition activities for SFY 03 include surveying and compliance checks of local retailers on the laws in regard to tobacco access and signage laws and providing merchant education workshops on state tobacco access and signage laws.

The following question pertains to the sampling methodology used by the State to meet the requirements of the Synar Regulation to measure State compliance with youth access to tobacco law.

6. In 2-3 pages, describe the sampling methodology used by the State to conduct random, unannounced inspections. Include in the description the following information:

Sampling design and methodology

Did the sampling methodology change from the previous year? If so, indicate the following.

- what changes were made,
- why the changes were necessary,
- when the changes occurred.

Describe the source(s) and quality of the sampling frame.

- the date when the sampling frame was last updated,
- the procedures used to insure that the addresses of tobacco outlets on the sampling frame are accurate,
- the criteria used to determine accessibility of outlets to youths,
- the methods used to verify that outlets identified on the sampling frame actually do sell tobacco,
- the methods used to locate tobacco outlets that were not on the sampling frame,
- the accuracy of the frame: the percentage of the sampling frame that included outlets that actually sell tobacco and had accurate addresses,
- the coverage of the frame: the percentage of all tobacco outlets in the State that were actually included on the sampling frame.

Describe the random selection process.

- the geographic unit used for sampling,
- the procedures used for selecting the sample of geographic sampling units,
- the method used for selecting outlets from within each sample geographic sampling unit,
- the original sample size, minimum number of required inspections, and final sample size; and explain how they were determined,
- if applicable, explain the difference between the original sample size and the final sample size; and indicate whether the final sample is representative of the distribution of tobacco outlets in the State.

Describe how replacement outlets and non-completed inspections were handled. Provide a

complete tally of non-completed inspections that include:

- the number of inspections that were not completed because the outlets were ineligible,
- the number of eligible but non-completed inspections.

ARKANSAS RESPONSE:

The **SAMPLING METHODOLOGY** changed from the previous year. **WHY?** In the previous year, we used a two-stage cluster sample of 25 PSUs, with the first stage selected using the probability-proportional-to-size (PPS) methodology. This failed to be completely satisfactory for two reasons: First, there was an uneven distribution of workload. Last year's first-stage sample was drawn from 5 self-representing counties and 4 regional strata. The regional strata had no connection to the 5 traditional Arkansas Department of Health regions or the 13 Alcohol and Drug Abuse Prevention Catchment Areas. Inspections are conducted under the supervision of the Prevention Resource Center staff. In last year's sample, some were overworked and others had no sample in their region. Moreover, although the PRC staff is a primary customer of local violation information, some PRC regions had no local information because no sample was drawn from their region. Thus, there was a need to tie the sample more closely to the creators and users of the violation information – the 13 Alcohol and Drug Abuse Prevention Catchment Areas and the staff of the Prevention Resource Centers. Second, there was no easily available computer program to correctly calculate standard errors for a two-stage PPS sampling scheme.

After some discussion with CSAP, a revised two-stage cluster sample protocol was **approved** in an April 24, 2003 fax from Grant Hills, AR Synar Project Officer, to Gary Horton, ADAP Director (at that time). The State was to be divided into Primary Sampling Units (PSUs) that did not have more than a 2-fold variation in size. The first stage was to be a simple random selection of a **fixed number** of PSUs from each of the 13 Prevention Resource Regions. Then a second stage was to be a simple random selection of tobacco outlets from the selected PSUs at a **constant rate**.

WHEN? The sample was drawn on May 9, 2003, in time for transfer to the PRC directors at their May 13 training meeting.

The **sample frame** consists of the Arkansas Tobacco Control Board's list of the

4,722 tobacco retail permit holders in the state of Arkansas as of May 8, 2003. A copy of the sampling frame may be accessed at the Arkansas Tobacco Control Board web site: http://www.arkansas.gov/atcb/permit_holders_search.html. The list is updated continually and posted periodically on the Internet. Outlets added after the date of posting the Internet copy of the sampling frame were faxed to Health Statistics on May 8, 2003 for inclusion in the sampling frame. The frame was thought to be free of duplicates (one duplicate was discovered during inspection) and errors found from previous inspections have been corrected. Although outlets found to be out of business or not selling tobacco in previous studies have been deleted from the sampling frame, the frame suffers from **over coverage**, meaning some outlets listed on the frame no longer sell tobacco or are out of business. The data base did not indicate which of the outlets had "Members Only", "Over 21", or "Employees Only" signs which would have indicated that they were inaccessible to youth, so these also contributed to the over coverage of the frame. The estimated **accuracy** of the frame, based on the unweighted ratio of the eligible outlets to total sample is 84 percent, higher than the 75 percent accuracy of previous years. Since the sampling frame was set on May 8, 2003 and the average date of inspection was June 12, 34 days had elapsed in which new outlets could begin selling tobacco. There are approximately 500 new additions yearly, so an estimated $500 \times 34 \text{ days} / 365 \text{ days} = 47$ establishments would not be included in the frame, giving an **estimated coverage** of the frame of 99 percent. $100 \times (4,722 \text{ outlets in frame} / (4,722 + 47 \text{ outlets in business})) = 99 \text{ percent}$.

The **random selection process** began with the allocation of the 4,722 tobacco outlets to PSUs. Counties with fewer than 34 tobacco outlets were designated PSUs. Addresses of the outlets in the remaining counties were assigned latitude and longitude values by the geocoding software MAPMARKER. Addresses that did not match the MAPMARKER database were assigned the latitude and longitude of the centroid of their zip code. Then PROC RANK of SAS V8.2 used latitude to divide the outlets of counties into groups with between 17 and 34 outlets. These groups became PSUs. Thus, the outlets of the state were divided into 228 geographically defined PSUs and assigned, by county, to the 13 PRC regions, which are contiguous clusters of counties. This is the first sampling stratum. PROC SURVEYSELECT of SAS V8.2 selected 5 PSUs from each of the 13 PRC Regions using the SRS method (Simple Random Sampling). These 65 PSUs form the second sampling stratum. PROC SURVEYSELECT then used the SRS method with fixed probability of 0.77 to select 1,070 survey outlets from the PSUs selected in the first round. The sample of 1,070 included a 10 percent reserve. There was no separate reserve sample.

Based on last year's violation rate of 12 percent, the **effective sample size** needed to meet the SAMHSA precision requirement of a standard error less than 1.82 percent is 318.8. Effective sample size is the minimum sample needed with a simple

random sampling from an infinite population = $p*(1-p)/0.0182^2$, where p is the expected violation rate (last year's rate).

The **target sample size** is the effective sample size adjusted for design effects. Two design effects apply: first a finite population correction decreases the necessary sample size:

$$\begin{aligned}n' &= n/(1+n/\text{population}) \\n' &= 318.8/(1+318.8/4722) \\n' &= 298.6\end{aligned}$$

This is then multiplied by the design effect expected from sampling in clusters. The design effect from the previous year could not be used because we were using a completely new sampling scheme. Instead, we estimated the expected design effect with the following formula:

$$\text{Deff} = \{1+(m-1)\rho\}(1+CV_w^2)$$

where m is the average cluster size, ρ is the intra-class correlation and CV is the coefficient of variation of the sampling weights. An average cluster size of 16.5, an intraclass correlation of 0.05 and a coefficient of variation of 0.37 gives a design effect of 2.42. The final **target sample size** is:

$$\begin{aligned}n_t &= \text{Deff} * n' \\722.7 &= 2.42*298.6\end{aligned}$$

Then the sample size needed to achieve the target, called the **original sample size**, is computed from the expected accuracy rate, r_i , and the completion rate, r_c , by the formula

$$\begin{aligned}n_o &= n_t/(r_i r_c) \\978.2 &= 722.7/(0.811*0.911) \\ \text{Last year's accuracy} &= 81.1 \text{ percent, completion rate} = 91.1 \text{ percent.}\end{aligned}$$

A 10 percent reserve covered errors or unexpected changes in the various estimates to give an **actual sample size** of 1,070.

$$\begin{aligned}n_a &= 1.10 * n_o \\1076 &= 1.1 * 978.2\end{aligned}$$

Rounding to integer numbers in each PSU resulted in a loss of 6 to give a actual sample size of 1,070.

Vending Machines

Some vending machines are accessible to youth. Beginning in FFY 2002, the ATCB required that vending companies furnish a list of machines and their physical locations; hence, an accurate list of vending machine locations is readily available.

The vending machine list was joined with the over-the-counter list and sampling was done without regard to permit type. Outlets with vending machines were sampled and checked with the same probability as over-the-counter locations. A large portion of vending machines are located in restricted areas such as employee lunch rooms and night clubs and thus are not eligible to be inspected. After the sample was drawn, we discovered that the 295 establishments with vending machines on the ATCB list contained 313 machines. We consulted with Grant Hills, Synar Project Officer, to add an extra clause to the vending machine protocol to handle cases of multiple machines, however the two establishments with multiple machines in the sample were both inaccessible to youth, so the issue became moot. The 295 establishments with vending machines are 6.2 percent of the 4,722 establishments selling tobacco in the state. The sample of 1,070 contained 72 establishments with vending machines or 6.7 percent of the sample. The 313 vending machines are 6.6 percent of the 4,741 tobacco outlets in the state. The sample contained 74 vending machines or 6.9 percent of the sample.

The following question pertains to the random sample survey required by the Synar Regulation to measure State compliance with youth access to tobacco laws.

7. In 3-5 pages, report the complete results of the inspections conducted for the Synar survey during the FFY 2003. Report the unweighted and weighted retailer violation rates, including the corresponding standard error, and the confidence interval for the weighted reported retailer violation rate. Provide all supporting tables, formulas, and values used to calculate the final weighted retailer violation rate.

ARKANSAS RESPONSE:

There were 129 violations in 888 inspections, giving an **unweighted violation rate of 14.5%** (Form 1), and a **weighted violation rate of 16.6%**.

Ineligible and Non-Completed Inspections

For the year 2003, Arkansas had an initial sample size of 1,070, with 170 sites deemed ineligible for inspection, giving an **eligibility rate of 84.1%**. See the details in the attached Summary Sample Tally Sheet. Of the remaining 900 locations deemed eligible, inspections were conducted 888 sites, giving a **completion rate of 98.7%**. Further details are shown in the attached Summary Sample Tally Sheet.

Sample Weight Calculations

Optional Form 2 is not appropriate for the two-stage stratified cluster design used for the inspection.

The sample weight calculation begins with computing the **base sampling weight** as the product of the inverse of the stage 1 sampling rate times the

inverse of the stage 2 sampling rate. Both of these values are provided in the data set produced by PROC SURVEYSELECT in SAS V8.2. As a check, the sum of the base sampling weights is 4762.4, about 40 larger than the sampling frame of 4,722.

Next, a **noncompletion adjustment factor** is computed for each PRC Region (stratum). This is computed as the sum of the base sampling weights of the eligible outlets divided by the sum of the base sampling weights of the inspected outlets. Five regions had complete inspections, giving a noncompletion factor of 1. The maximum noncompletion factor of 1.06 was found in PRC Region 8.

There was no further adjustment of weights. The **final weight** is the product of the base sampling weight and the noncompletion adjustment factor. The sum of the final weights, 3993.0, is an estimate of the number of Arkansas tobacco outlets in business and eligible to be accessed by youths.

Calculating SE and CI.

The standard error was calculated using SAS V9.0 PROC SURVEYREG. PRC Region was specified as the stratum, with PSU as clusters sampled within the strata. The finite population correction was applied by specifying a TOTAL data set containing the total number of PSUs in each stratum. The regression model is a simple one: violation = inspected. This gives the violation rate in only the inspected establishments while allowing the total sample to be included in the model for proper calculation of the standard error. PROC SURVEYMEANS gives a nearly identical standard error when the data are limited to the 888 inspected establishments.

The weighted violation rate is 16.6 percent, with **standard error of 1.59 percent**, giving a **right-sided 95 percent confidence limit of 19.2 percent**.

FORM 1

Complete Form 1 to calculate the unweighted retailer violation rate using results from the current year's Synar survey inspections.

Instructions for Completing Form 1 for the FFY 2004 Synar report:

1. In the top right hand corner of the form fill in the name of the State for which information being provided.
2. Provide information for each geographic sampling unit on one line across the page. Make copies of the form if needed and continue to number sequentially.
3. Column 1: Write in category of geographic sampling unit used. Indicate the percent

of the total State population under 18 residing in each geographic sampling unit. The U.S. Census Bureau 2000 data was released July 2001. (For assistance call the U.S. Census Bureau's Customer Service Center at 301-457-4100). All geographic sampling units in the State must be listed in Column 1.

4. Column 2: Report number of outlets in each geographic sampling unit for both over-the-counter outlets and vending machine outlets. Vending machines must be included in the universe of outlets and the sampling frame unless: (1) previously discussed with and approved by SAMHSA in the design of the State's sampling methodology or (2) the State verifies that no vending machines exist in the State or that vending machines are inaccessible to minors.

5. Column 3: Report in column 3 on only those geographic sampling units in which random, unannounced inspections were conducted.
 - (a) Provide the number of over-the-counter (OTC) outlets **randomly** inspected in the geographic sampling unit during the FFY.
 - (b) Provide the number of vending machines **randomly** inspected during the FY.
 - (c) Provide the total number of outlets **randomly** inspected--columns 3(a) plus 3(b).

6. Column 4:
 - (a) Enter the number of OTC outlets found in violation of the law during **random** inspections in the geographic sampling unit during the FFY.
 - (b) Enter the number of vending machines found in violation of the law during **random** inspections in the geographic sampling unit during the FFY.
 - (c) Enter the number of total OTC and vending machines found in violation of the law during **random** inspections in the geographic sampling unit during the FFY--columns 4(a) plus 4(b).

7. Row Totals:
 - (a) For columns 2 and 3, provide totals on the last page after data for all geographic sampling units are entered.
 - (b) For each sub-column in 4, provide totals for the State **as a whole** on the last page.

FORM 1

Summary of Tobacco Inspections Results by State Geographic Unit

State ARKANSAS
FFY 2004

(1)			(2)			(3)			(4)		
			NO. OF TOBACCO OUTLET POPULATION			NO. OF OUTLETS RANDOMLY INSPECTED IN FFY			NO. OF OUTLETS FOUND IN VIOLATION DURING RANDOM INSPECTIONS		
No.	Geographic Sampling Unit	Percent of Youth Under 18	(a) Over-the Counter (OTC)	(b) Vending Machines (VM)	(c) Total Tobacco Outlets (2a+2b)	(a) Over-the Counter (OTC)	(b) Vending Machines (VM)	(c) Total Tobacco Outlets (3a+3b)	(a) Over-the Counter (OTC)	(b) Vending Machines (VM)	(c) Total Tobacco Outlets (4a+4b)
1	PRC 1	14.0%	410	25	435	63	6	69	11	2	13
2	PRC 2	3.3%	217	2	219	75	0	75	4	0	4
3	PRC 3	7.5%	380	1	381	69	0	69	19	0	19
4	PRC 4	9.3%	385	3	388	71	0	71	16	0	16
5	PRC 5	9.4%	402	39	441	65	0	65	7	0	7
6	PRC 6	8.1%	323	18	341	68	0	68	13	0	13
7	PRC 7	6.3%	308	6	314	70	1	71	0	0	0
8	PRC 8	5.4%	317	56	373	64	2	66	5	0	5
9	PRC 9	19.3%	703	95	798	66	4	70	18	2	20
10	PRC 10	4.5%	232	22	254	56	1	57	1	0	1
11	PRC 11	4.5%	256	6	262	65	1	66	3	0	3

12	PRC 12	5.3%	278	21	299	72	3	75	18	1	19
13	PRC 13	3.2%	217	0	217	66	0	66	9	0	9
	Total	100%	4,428	294	4.722	870	18	888	124	5	129

TOTALS (LAST PAGE ONLY)

FORM 2

Complete optional Form 2, if necessary, to calculate the weighted retailer violation rate. This table is designed to assist the State in accounting for ineligible outlets and incomplete inspections encountered during the annual Synar compliance survey. If a table or method other than optional Form 2 is used, describe in detail the process and procedures used to calculate the final weighted rate, and include all formulas and calculations.

Instructions for Completing Form 2 (Optional) for the FFY 2004 Synar report:

- | | |
|------------|--|
| Column 1: | Write in the name of each stratum into which the sample was originally divided. This will match the category of geographic sampling unit reported in Column 1 of Form 1. |
| Column 2: | Report the original population estimate of outlets in each stratum (includes ineligible outlets). These should match the numbers reported in Column 2(c) of Form 1. |
| Column 3: | Report the original sample size (the number of outlets originally selected) for each stratum. |
| Column 4: | Report the number of sample outlets that are found to be eligible during the inspections (i.e. open and selling tobacco) for each stratum. Note that this number must be less than or equal to the number reported in Column 3. |
| Column 5: | Report the number of sample eligible outlets that were inspected in each stratum. Note that this number must be less than or equal to the number reported in Column 4. These numbers should match the numbers reported in Column 3(c) of Form 1. |
| Column 6: | Report the number of inspected outlets that failed inspection in each stratum. These numbers should match the numbers reported in Column 4(c) of Form 1. |
| Column 7: | Form 2 will automatically calculate the unweighted retailer violation rate. This is calculated by dividing the number of inspected outlets that failed inspection by the number of sample eligible outlets. The overall unweighted retailer violation rate will be indicated in the Total row of Column 7. |
| Column 8: | Form 2 will automatically calculate the adjusted outlet population estimate based on the number in the sample found ineligible. This calculation is made by multiplying the original population estimate of outlets times the number of eligible outlets divided by the original sample size. Note that these numbers will be less than or equal to the numbers in Column 2. |
| Column 9: | Form 2 will automatically calculate the relative stratum weight by dividing the adjusted outlet population estimate by the total of the values in Column 8. |
| Column 10: | Form 2 will automatically calculate the weighted retailer violation rate by multiplying the unweighted retailer violation rate by the relative stratum weight. The overall weighted retailer violation rate will be shown in the last row of |

Column 10.

FORM 2 (OPTIONAL)

Calculation of Weighted Retailer Violation Rate

State _____
FFY 2004

(1) Stratum (Geographic Sampling Unit)	(2) N Original Estimate of Outlet Population in Stratum	(3) n Original Sample Size	(4) n1 Number of Sample Outlets Found Eligible	(5) n2 Number of Outlets Inspected	(6) x Number of Outlets Found in Violation	(7) p=x/n2 Unweighted Retailer Violation	(8) N=N(n1/n) Adjusted Outlet Population Based on Number in Sample Found Ineligible	(9) w=N=/Total Column 8 Relative Stratum Weight	(10) pw Weighted Retailer Violation Rate
Total									

- N - original population estimate of outlets in stratum (includes ineligible outlets)
 n - original sample size (number of outlets in sample)
 n1 - number of sample outlets that are found to be Aeligible@ (i.e. open and selling tobacco) (n1#n)
 n2 - number of sample eligible outlets that were inspected (n2#n1)
 x - number of inspected outlets that failed inspection (x#n2)
 p - unweighted retailer violation rate (p=x/n2)
 N= - adjusted population estimate based on number in sample found ineligible (N==N*n1/n, N=#N)
 w - relative stratum weight (w=N=/Total Column 8)
 pw - weighted retailer violation rate

FORM 3

Complete Form 3 to show the distribution of outlet inspection results of attempted and successful buys by age and gender.

Complete the appropriate columns in Form 3 ensuring that the numbers match the totals reported in Form 1, optional Form 2, and the retailer violation rate reported in the text. If the totals do not match, explain any discrepancies among data presented in Form 1, Form 2 (Optional), Form 3, and the weighted retailer violation rate reported in the text. Also note that the categories for reporting the age of the youth inspectors have changed from previous SAPT BG applications.

Using the following form, enter the number of Attempted Buys conducted by buyer age and gender, in column a and the number of “Successful Buys” in column b. If the age and/or gender of the buyer is not known, then include those inspections in the “Other” category in row 3.

Synar Survey Inspections		
State <u>Arkansas</u>		
FFY <u>2004</u>		
Male	a. Attempted Buys	b. Successful Buys
14 yrs	0	0
15 yrs	210	19
16 yrs	242	27
17 yrs	0	0
18 yrs	0	0
1. Subtotal	452	46
Female		
14 yrs	0	0
15 yrs	291	51
16 yrs	145	32
17 yrs	0	0
18 yrs	0	0
2. Subtotal	436	83
3. Other		
4. Total	888	129

8. Describe the protocol for conducting random, unannounced inspections. Ensure the following specific items are addressed in your description.
- Have any changes been made in the inspection protocol from the previous year?
 - Indicate the start and end dates of the Synar inspections conducted during the current reporting period and whether the dates are different from previous years.
 - Describe the methods used to recruit, select, and train youth inspectors and adult supervisors.
 - Describe the inspection methodology used. (e.g., consummated or unconsummated buys, instructions for carrying and showing identification, team composition and whether an adult monitor enters the outlet with the youth inspector, time of day inspections are conducted, compensation for the minors, data collection procedures, etc).
 - Besides what is specified in the State youth access tobacco law, explain whether the State has other legal or procedural requirements regarding how inspections are to be conducted (i.e., age of minor, time of inspections, training that must occur)?
 - Describe specific legal or procedural requirements the State has instituted to address the issue of minors= immunity when conducting inspections.
 - Describe specific legal or procedural requirements the State has instituted to address the issue of child safety.

ARKANSAS RESPONSE:

Two changes have been made to the inspection protocol since the last application.

1. The ages of youth inspectors were limited to 15 and 16 year olds. Last year, some PRCs failed to follow this established protocol and had some inspections conducted by 14 and 17 year olds. This year the established protocol was followed by all PRCs.
2. As described in section 6, after the sample was drawn we discovered that a limited number of establishments with vending machines had multiple machines. We consulted by telephone with Grant Hills, AR Synar Project Officer, and inserted step 3 into the previous year's protocol. However, since none of the sampled establishments with multiple machines were accessible to youth, the protocol change had no effect on inspections. The protocol follows:

The 2003 Arkansas Vending Machine Inspection Protocol

1. The adult volunteer will locate and drive the youth volunteer to the retail outlet designated for vending machine inspections.
2. Youth volunteer is to enter establishment and seek out vending machine. If cannot find vending machine, youth volunteer is to ask attendant where vending machine is located.
3. If the establishment has more than one vending machine, as indicated on the data collection form, attempt to determine if any of these machines are accessible to youth. If any are accessible, pick one of these machines, describe the location on the data collection form and proceed with step 4 of the inspection.
4. Upon encountering vending machine, youth volunteer is to purchase tobacco from the vending machine unless attendant questions the youth volunteer.
 - If asked about his/her age, the youth volunteer will respond with his/her actual age and unless told by the attendant that they cannot purchase, the youth volunteer is to purchase the tobacco from the vending machine.
 - If told they cannot purchase, the youth will leave the outlet.
5. Once the youth volunteer has completed the purchase, the youth volunteer will exit the outlet, return to the car, give cigarettes to and provide necessary information for the adult volunteer to complete the inspection form.

Synar inspections are not tied to enforcement actions. Synar violations are shared with the enforcement agency, ATCB, which treats these as a citizen complaint and follows up with an official inspection whenever schedule allows.

The **Synar inspection timeline** began with finalizing the ATCB list of tobacco establishments on May 8, 2003. Then the sample was drawn on May 9 and presented to the Regional Prevention Resource Center (PRC's) Coordinators in their May 13, 2003 training at ADAP. The compliance checks began immediately after the PRC's recruited and trained youth inspectors and adult supervisors. The compliance checks were to be completed and submitted to CHS no later than July 3, 2002. Mean date of inspection was June 12. One sample, which had been missed in June, was finally inspected on September 30. The training and compliance checks were conducted approximately in the same time frame as the previous year.

The PRCs **recruit youth inspectors** and adults from each of their Regions at the county and local level. They also may recruit and obtain youth from ADAP funded grant programs located in their region, since some of the ADAP grantees have staff

and/or youth ages 15 and 16 that would be available to assist with conducting the compliance checks. Once the appropriate number of youth and adult supervisors are selected, the PRCs train all the youth inspectors and adult supervisors on the inspection methodology and protocol for conducting the compliance checks.

All minors must have a parent/legal guardian sign a consent release form authorizing their participation in the compliance checks. All youth inspectors and adult supervisors sign a form indicating they have received training to conduct the random, unannounced inspections. The PRCs maintain the training signature and parental authorization forms on file. ADAP provides each accompanying adult a letter authorizing their involvement with the Synar compliance checks during the specified period.

The adult supervisors and youth were given data collection forms preprinted with the name, address, and phone number of sample locations to be inspected in their region. Adult drivers drove minors to selected outlets where minors entered the store and asked the clerk or merchant for a pack of cigarettes or spit/chew tobacco.

For vending machines, youth attempted to purchase without asking for change from the clerk or merchant. After the attempted purchase, the minor returned to the car and provided the adult with the information for the data collection form. If tobacco was purchased, that evidence was marked with the store name and date/time of the purchase. After completing all surveys in their areas, adults returned all forms and tobacco products to the PRC who, in turn, delivered this to CHS. Monitoring was not done with the purpose of citing stores that violate the law, although results were made available to the ATCB, who placed these merchants on a priority list for official inspection. A joint letter from ADAP/TPE is sent to all outlets that were inspected. The outlets that did not sell tobacco to minors were sent a letter commending them for being in compliance with the tobacco laws and refusing to sell tobacco to minors. Outlets that sold tobacco to a minor were sent regret letters informing them of being out of compliance with the laws and reminding them of the tobacco laws.

Minors were instructed not to carry their I.D.s into the store with them and to state their actual age if asked. No adults conducted the in-store/over-the-counter or vending machine purchase attempt portion of any survey. Adults were recruited and trained. The adults transported youth to inspection sites and completed the necessary paperwork. Only minors who were 15 or 16 years old were used, with approximately equal numbers of inspections conducted by males and females.

Most PRCs do not have adequate resources in their budget to **compensate** the youth for their time. The PRC does provide lunch, snacks and other incentives that an individual PRC may be able to obtain from the community. ADAP purchased and distributed t-shirts to the PRCs for the youth and adult volunteers for the FFY 2003

year.

Arkansas does not have any legal or procedural requirements regarding how inspections are conducted; however, the state law does limit who can conduct inspections (Arkansas Tobacco Control Board, an authorized agent of the Arkansas Department of Health, Arkansas State Police, and local law enforcement officials). ADAP provides adults accompanying the youth with a letter authorizing their involvement in these inspections during the specified period.

Data were collected on forms pre-printed with the merchant name, address, ownership, and telephone number information obtained from ATCB. Adult volunteers filled out the forms at the time that the inspection was made. PRC coordinators then checked each form before sending all to the Center for Health Statistics. Forms were keyed with full verification by a professional data entry firm. Data were finalized after a series of computer edits, sometimes coupled with a telephone call or e-mail to the PRC coordinator to resolve questions.

Arkansas does not have any legal or procedural requirements regarding a minor's immunity when conducting inspections. The procedure has been a parental decision on whether they will allow and authorize their child to testify in future administrative or court proceedings concerning these operations. To date, there have not been any cases in which administrative or court hearings or court proceedings have been held as a result of Synar inspections.

Notifications of non-compliance are sent to the ATCB after the compliance checks are conducted. The ATCB gives priority consideration of conducting official inspections on those outlets that are reported from Synar as being out of compliance with the tobacco laws. Due to their limited resources to enforce the law throughout the entire state, this information assists ATCB agents to target outlets who are reportedly not complying with the tobacco laws.

Arkansas does not have any legal requirements regarding issue of child safety when conducting inspections. The procedural requirement is that if the selected location is deemed unsafe by the adult driver and/or youth under the age of eighteen (18) or twenty-one (21) are not permitted to enter the location, then the check should not be conducted. In such cases, the reason the location was not inspected is noted on the survey form.

SECTION II

FFY 2004 (Intended Use):

In 2-5 pages, describe the State's plans to achieve the interim target rate for FFY 2004 (Part 96.130 (e))

(4)). Ensure the following specific items are addressed in your description of activities and/or changes that are planned.

- Sampling methodology.
- Inspection protocol.
- Legislative actions and/or regulatory changes.
- Law enforcement.
- Activities that support law enforcement such as, merchant education, community education, media use, community mobilization.

ARKANSAS RESPONSE

Sampling methodology/Inspection Protocol:

The state anticipates making a minor change in the vending machine methodology. After this year's sample was drawn and 1,070 forms printed, we discovered that the 295 establishments with vending machines contained 313 machines. There were inconsistencies in the ATCB listing. Individual machines were sometimes listed. In other cases, machines were grouped: "Electric Cowboy – 3 machines", for example. After a hasty discussion with Grant Hills, AR Synar Project Officer, a temporary modification of the vending machine protocol was implemented (discussed in Section 8). We agreed that this emergency modification of protocol was not completely satisfactory. In the future, we plan to consistently list each individual machine in the frame and sample files. We will need to discuss this with, and get approval from, our Project Officer prior to beginning plans for next year's effort. This change will affect handling of less than 0.5% of the frame and sample.

Legislative actions and/or regulatory changes:

The Arkansas Board of Health was not successful in last year's attempt to pass regulations that would ban smoking in restaurants. However, there is a current movement underway in Fayetteville to support a local ban in their restaurants.

ATCB is working with other state and federal agencies to solve problems relating to Internet/Media Sales of tobacco. While they have no answers, this issue will be put forth in the next legislative session. Internet/Media Sales not only result in lost revenues to the State, businesses in Arkansas are complaining about losing sales to these unregistered and unlicensed entities selling illegally into our State. In addition, Internet/Media sales allow for easier access to cigarette and tobacco products by under age minors. Without a face to face transaction, there is no way to ensure only adults are purchasing and receiving these products.

Law Enforcement:

Strategies for enforcing the state tobacco law include continuing to (1) report violations to the ATCB and urge civil penalties and suspension of license; (2) report violations to the City of Little Rock if the outlet is located within the city; (3) encourage media to print the results of violations and inspections; (4) encourage local action to stop sales; and (5) give recognition to those businesses which are in compliance.

Funds from the MSA are providing the ATCB with resources to support positions responsible for enforcing the underage sales of tobacco. ATCB hired six agents in June 2003, which meant those agents were only "on board" for one month of that SFY. This hiring brought ATCB to a full force of 8 field inspectors and a supervisor (a total of nine agents addressing underage sales issues). As a result, we anticipate an increase in law enforcement efforts at the State level. In having an adequate number of agents to conduct inspections, it is anticipated that the initial result will be an increase in violations which will be followed by a growing awareness among merchants to become more responsible about underage sales.

Activities that support law enforcement such as merchant education, community education, media use, community mobilization.

Merchant education conducted by the Regional Prevention Resource Centers and the AR Department of Health's Office of Tobacco Prevention and Education (TPE) will continue to be ongoing throughout the year. Media use has increased dramatically due to the funds appropriated from the MSA and will continue to be a vehicle for public awareness and education. In addition, the MSA funds are supporting community-level grants resulting in tobacco prevention programs and development of community tobacco coalitions throughout the state. ADAP and ATCB are in process of collaboratively developing a merchant education package. When completed, both the ATCB agents and PRCs will be trained in the delivery of package to merchants and other community groups.

Describe the State's strengths and challenges it faces in complying with the Synar requirements.

Our best strengths are the working relationships and collaboration of several independent entities to make Synar happen. ADAP is an administrative body and does not have staff to conduct the inspections or the scientific capability required for sampling, analysis, etc. ADAP would have been hard pressed to conduct the Synar compliance checks if the PRC System had not been in existence before Synar became an obligation. To assist our Synar efforts, ATCB imposed new regulations on merchants requiring that they identify the location of vending machines.

The ADH Center for Health Statistics provides the necessary technical support for meeting the Synar obligation.

Our primary issue with Synar is having to rely on the 20% prevention set aside to support the Synar effort. ADAP uses prevention set aside funds to support the CHS technical support and the PRC grants. Each PRC grant budget must support all expenses associated with their conducting the compliance checks. This reduces the amount of funds available to support other needed prevention services.

The greatest challenge our agency continues to face each year is the risk of being out of compliance and having a reduction in the SAPT Block Grant budget. The SAPT is the only source of substance abuse prevention funds in Arkansas. Our rate of non-compliance has varied over the years and is unpredictable.

Describe any administrative or legal constraints on regulation and enforcement.

Administrative constraints concerning regulation and enforcement exist. Several ATCB members are representatives from or allies of the tobacco industry. Members of the Arkansas Grocers and Retail Merchants Association, the Oil Marketers Association and several tobacco wholesale associations regularly attend ATCB meetings and urge support for additional regulatory or enforcement initiatives, some of which may produce additional constraints to conducting compliance inspections and/or enforcing the state law regarding suspending licenses or fining individuals who sell, distribute or give tobacco to minors.

Describe the level of public support for inspections, enforcement, and public policy efforts.

Demographic characteristics, which affect the difficulty of enforcement, include the fact that Arkansas is basically a rural state with large distances between some outlets. Conducting an inspection of a single outlet can take a great deal of mileage, time and effort. ATCB conducts official inspections but until recently their ability to do so was hampered because of staffing limitations.

Another difficulty is that youth who reflect the demographics of the youth in a particular community are not always available to assist with compliance inspections. In rural areas, strangers or people of a different race stand out and clerks/merchants are less likely to sell to a stranger in a small town.

During the past year, the level of support for inspections and enforcement of the law has increased, due to the local prevention efforts supported by the MSA. In addition, by having additional agents in ATCB, we are seeing an increase in the

number of underage sales violations and the number of hearings before the ATCB. Our challenge is for the Board to better uphold staff recommendations regarding dispensation of the cited violations.

APPENDIX

Table 2: Summary Sample Tally Sheet					
Result Code	Description	Count			
		Eligible Complete	Eligible Non-Complete	Ineligible	
E1	Outlet is eligible and Inspected	888	0	0	
N1	Outlet is in operation but closed at the time of visit	0	2	0	
N2	Outlet is unsafe to access by youth inspector	0	9	0	
N3	Police is present in the outlet	0	0	0	
N4	Youth inspector knows the sales person	0	0	0	
N5	Other - form was lost	0	1	0	
I1	Outlet is out of business	0	0	54	
I2	Outlet does not sell tobacco products	0	0	33	
I3	Outlet is inaccessible by youth	0	0	73	
I4	Outlet is a private club	0	0	0	
I5	Outlet is closed for a period of time	0	0	0	
I6	Outlet cannot be located	0	0	9	
I7	Other - duplicate already inspected	0	0	1	
Total		888	12	170	
Note: No distinction made between I3 and I4.					

A Bill

Act 846 of 2003
HOUSE BILL 2470

By: Representative Moore

For An Act To Be Entitled

AN ACT TO REDUCE THE STATE'S EXPENDITURES
BY ALLOWING RETAILERS TO USE ALTERNATIVE
SIGNAGE FOR THE DISPLAY OF THE LEGAL
WARNING THAT CIGARETTES AND OTHER
TOBACCO PRODUCTS CANNOT BE SOLD TO OR
PURCHASED BY A PERSON UNDER THE AGE OF
EIGHTEEN (18); AND FOR OTHER PURPOSES.

Subtitle

TO ALLOW FOR ALTERNATIVE SIGNAGE FOR
TOBACCO PRODUCTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-27-227(f), regarding the prohibition of selling cigarettes and other tobacco products to minors and of minors purchasing cigarettes and other tobacco products, is amended to read as follows:

(f) It shall be unlawful for any person who has been issued a permit or a license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to fail to display ~~prominently at each retail sales counter~~ in a conspicuous place or on each vending machine a sign indicating that the sale of tobacco products to, or purchase of, or possession of tobacco products by a person under the age of eighteen (18) years of age is prohibited by law. that meets the following requirements:

~~(1) The sign shall contain in red lettering at least one half inch (1/2") high on a white background, "IT IS A VIOLATION OF THE LAW FOR CIGARETTES OR OTHER~~

~~TOBACCO PRODUCTS TO BE SOLD TO OR PURCHASED BY A PERSON UNDER THE AGE OF 18"; and~~

~~(2) The sign shall include a depiction of a pack of cigarettes at least two inches (2") high defaced by a red diagonal diameter of a surrounding red circle.~~

APPROVED: 3/27/2003

A.C.A. § 5-27-227 (2003)

§ 5-27-227. Providing minors with tobacco products and cigarette papers -- Purchase, use, or possession of tobacco products and cigarette papers by minors prohibited -- Placement of tobacco vending machines

(a) It shall be unlawful for any person to give, barter, or sell to a minor under eighteen (18) years of age:

- (1) Tobacco in any form; or
- (2) Cigarette papers.

(b) It shall be unlawful for any person under eighteen (18) years of age:

(1) To use or possess, unless acting as an agent of the minor's employer within the scope of employment:

- (A) Tobacco in any form; or
- (B) Cigarette papers;

(2) To purchase or attempt to purchase:

- (A) Tobacco in any form; or
- (B) Cigarette papers; or

(3) For the purpose of obtaining or attempting to obtain tobacco in any form or cigarette papers, to:

- (A) Use any falsified identification; or
- (B) Use any identification other than his or her own.

(c) (1) It shall not be an offense under subdivisions (b)(1) or (2) of this section if the minor was acting at the direction of an employee or authorized agent of a governmental agency authorized to enforce or ensure compliance with laws relating to the prohibition of the sale of tobacco in any form or cigarette papers to such minors.

(2) All minors used in this manner by a governmental agency shall display the appearance of a person under eighteen (18) years of age.

(3) (A) The person under eighteen (18) years of age, if questioned by the retailer or the agent or employee of the retailer about his or her age, shall state his or her actual age and shall present a true and correct identification if verbally asked to present it.

(B) Any failure on the part of the person under eighteen (18) years of age to provide true and correct identification, if verbally asked for it, shall be a defense to any action pursuant to this section or a civil action under § 26-57-257.

(4) No minor shall be subject to arrest or search by any law enforcement officer merely on the grounds that the minor has or may have possession of tobacco or cigarette papers.

(d) No person shall engage or direct a person under eighteen (18) years of age to violate any provision of this section for purposes of determining compliance with provisions of this section unless such person has procured the written consent of a parent or guardian of the minor to so engage or direct the minor and such person is:

(1) An officer having authority to enforce the provisions of this section;

(2) An employee of the Arkansas Tobacco Control Board or a prosecuting attorney;

(3) An authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with this section;

(4) An employee or authorized representative of the Department of Health;

(5) An employee or authorized agent of a governmental agency authorized to enforce or ensure compliance with the provisions of this section.

(e) Any person who sells tobacco in any form or cigarette papers shall have the right to deny the sale of any such tobacco in any form or cigarette papers to any person.

(f) It shall be unlawful for any person who has been issued a permit or a license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to fail to display in a conspicuous place or on each vending machine a sign indicating that the sale of tobacco products to, or purchase of, or possession of tobacco products by a person under the age of eighteen (18) years of age is prohibited by law.

(g) It shall be unlawful for any manufacturer whose tobacco products are distributed in this state and any person who has been issued a permit or license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to distribute free samples of any tobacco product or coupons that entitle the holder of the coupon to any free sample of any tobacco product:

(1) In or on any public street or sidewalk within five hundred feet (500') of any playground, public school, or other facility when such facility is being used primarily by persons under eighteen (18) years of age for recreational, educational, or other purposes; or

(2) To any person under eighteen (18) years of age.

(h) (1) (A) Except as provided in subdivision (h)(2) of this section, it shall be unlawful for any person who owns or leases tobacco vending machines to place a tobacco vending machine in a public place.

(B) For purposes of subdivision (h)(1)(A) of this section, "public place" means a publicly or privately owned place to which the public or substantial numbers of people have access.

(2) Tobacco vending machines may be placed in:

(A) Restricted areas within a factory, business, office, or other structure to which members of the general public are not given access;

(B) Permitted premises which have a permit for the sale or dispensing of alcoholic beverages for on-premises consumption which restrict entry to persons age twenty-one (21) or older; or

(C) Places where the vending machine is under the supervision of the owner or an employee of the owner.

(i) (1) Any retail permit holder or license holder who violates any of the provisions in this section shall be deemed guilty of a violation and subject to the following penalties:

(A) If the alleged violator has received a notice of an alleged violation from the Arkansas Tobacco Control Board or other agency or official with the authority to assess penalties containing the information specified in this subchapter, a fine not to exceed two hundred fifty dollars (\$ 250) for a first violation within a forty-eight (48) month period;

(B) (i) A fine not to exceed five hundred dollars (\$ 500) for a second violation within a forty-eight (48) month period; and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed two (2) days;

(C) (i) A fine not to exceed one thousand dollars (\$ 1,000) for a third violation within a forty-eight (48) month period; and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed seven (7) days;

(D) (i) A fine not to exceed two thousand dollars (\$ 2,000) for a fourth or subsequent violation within a forty-eight (48) month period; and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed fourteen (14) days; and

(E) For a fifth violation within a forty-eight (48) month period, the license or permit enumerated in § 26-57-219 may be revoked.

(2) Upon any revocation or suspension of a permit or license under the provisions of subdivision (i)(1) of this section, the person shall not be issued any new permit or license to distribute or sell tobacco products during the period of suspension or revocation.

(j) (1) A notice of alleged violation of this section shall be given to the holder of a retail permit or license within ten (10) days of the alleged violation.

(2) (A) The notice must contain the date and time of the alleged violation.

(B) (i) It shall also include either the name of the person making such alleged sale or information reasonably necessary to determine the location in the store that allegedly made such sale.

(ii) Such information should include where appropriate, but not be limited to the:

(a) Cash register number;

(b) Physical location of the sale in the store; and

(c) If possible, the lane or aisle number.

(k) Notwithstanding the provisions of subsection (i) of this section, the court shall consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling cigarettes or tobacco products to persons under the age of eighteen (18) years;

(2) The business has informed its employees of the applicable laws regarding the sale of cigarettes and tobacco products to persons under the age of eighteen (18) years;

(3) The business has required employees to verify the age of cigarette or tobacco product customers by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) That the appearance of the purchaser of the tobacco in any form or cigarette papers was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

(l) Any cigarettes or tobacco products found in the possession of a person under eighteen (18) years of age may be confiscated.

(m) An employee of a permit holder who violates § 5-27-227 shall be subject to a fine not to exceed one hundred dollars (\$ 100) per violation.

(n) The person convicted of violating any provision of this section whose permit or license to distribute or sell tobacco products is suspended or revoked shall, upon conviction, surrender to the court all such permits or licenses and the court shall transmit those permits and licenses to the Director of the Department of Finance and Administration and instruct the Director of the Arkansas Tobacco Control Board:

(1) To suspend or revoke, and not renew, the person's permit or license to distribute or sell tobacco products; and

(2) Not to issue any new permit or license to that person for the period of time determined by the court in accordance with this section.

A Bill

By: Representatives Ferguson, R. Smith, Bolin, Jackson

For An Act To Be Entitled

*AN ACT TO RAISE GENERAL REVENUE BY LEVYING
ADDITIONAL TOBACCO EXCISE TAXES ON CIGARETTES AND
TOBACCO PRODUCTS OTHER THAN CIGARETTES AND LEVYING
AN INCOME TAX SURCHARGE; AND FOR OTHER PURPOSES.*

Subtitle

*AN ACT TO RAISE GENERAL REVENUE BY
LEVYING ADDITIONAL TOBACCO EXCISE TAXES
ON CIGARETTES AND TOBACCO PRODUCTS OTHER
THAN CIGARETTES AND LEVYING AN INCOME
TAX SURCHARGE.*

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 26, Chapter 57, Subchapter 8 is amended to add an additional section to read as follows:

26-57-804. Additional tax.

(a) Beginning June 1, 2003, in addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101, there is levied an additional tax of twelve dollars and fifty cents (\$12.50) per one thousand (1,000) cigarettes sold in the state.

(b)(1) Whenever there are two (2) adjoining cities each with a population of five thousand (5,000) or more separated by a state line, the tax on cigarettes sold in the adjoining Arkansas city shall be at the rate imposed by law on cigarettes sold in the adjoining city outside of Arkansas. The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(2) The tax on cigarettes sold in Arkansas within three hundred feet (300') of a

state line, in any Arkansas city that adjoins a state line, or in any city which is separated only by a navigable river from a city which adjoins a state line shall be at the rate imposed by law on cigarettes sold in the adjoining state. The tax shall not exceed the tax upon cigarettes imposed by Arkansas law.

(3)(A) A wholesaler or retailer shall not sell cigarettes to a retailer located outside of a border zone described in subdivisions (b)(1) and (2) of this section unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101, without regard to any reduced border zone rate, has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(B) A retailer located outside of a border zone described in subdivisions (b)(1) and (2) of this section shall not possess or offer for sale cigarettes unless the full amount of tax levied by this section and §§ 26-57-208, 26-57-802, 26-57-803, and 26-57-1101, without regard to any reduced border zone rate, has been paid as evidenced by cigarette stamps affixed to each container of cigarettes.

(C) A violation of subdivisions (b)(3)(A) or (B) of this section shall be grounds for the suspension or revocation of a permit or license issued by the Director of the Arkansas Tobacco Control Board.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 shall apply to this section.

(d) Purchases of stamps pursuant to § 26-57-236, by wholesalers and stamp deputies during May 2003, shall be limited to one hundred and ten percent (110%) of the amount of each purchaser's average stamp purchase for the period January 2003 through April 2003.

(e) The additional tax levied under this section shall be imposed, reported, remitted, and administered in the same manner and at the same time as other taxes levied on cigarettes in the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201, et seq.

(f) The director shall not pay the commission authorized by § 26-57-236(g) with respect to the tax levied by this section.

(g) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections.

SECTION 2. Arkansas Code Title 26, Chapter 57, Subchapter 8 is amended to add an additional section to read as follows:

26-57-805. Additional tax.

(a) Beginning June 1, 2003, in addition to the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, and 26-57-1102, there is levied an additional tax on tobacco products other than cigarettes on the first sale to wholesalers or retailers within the state at seven percent (7%) of the manufacturer's selling price. The tax shall be computed on the actual manufacturer's invoice price before discounts and deals.

(b)(1) The tax levied by this section shall be reported and paid by wholesalers licensed pursuant to § 26-57-214.

(2) Retailers, however, shall be liable for reporting and paying this tax when a retailer purchases tobacco products directly from a manufacturer or from a wholesaler or distributor not licensed pursuant to § 26-57-214.

(c) The exemptions and waivers allowed under §§ 26-57-209 and 26-57-210 shall apply to this section.

(d) The revenue derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections for that month.

SECTION 3. Title 26, Chapter 51, Subchapter 2, is amended to add a new section to read as follows:

26-51-207. Income tax surcharge.

(a) In addition to the tax levied by §§ 26-51-201 through 26-51-206, 26-51-301, and 26-51-302, there is hereby levied an income tax surcharge of three percent (3%) of the tax liability of every person required to file an Arkansas income tax return.

(b)(1) If an individual is a resident of an Arkansas border city described in §§ 26-52-601 through 26-52-607, then the individual shall be liable for the income tax surcharge levied in subsection (a) of this section.

(2) The surcharge shall be computed on the tax liability that would have been due had the income tax exemption of §§ 26-52-601 through 26-52-607 not been available.

(3) The income tax exemption of §§ 26-52-601 through 26-52-607 shall not apply to the income tax levied in subsection (a) of this section.

(c) The revenues derived from the additional tax imposed by this section shall be credited to the General Revenue Fund Account of the State Apportionment Fund, there to be distributed with the other gross general revenue collections.

(d) For purposes of this section, "tax liability" means the tax imposed pursuant to §§ 26-51-201 through 26-51-206, 26-51-301, and 26-52-302, before the application of any tax credits.

(e) This section shall apply to tax years beginning in calendar years 2003 and 2004.

(f)(1) This section shall also continue to apply to tax years beginning on and after January 1, 2005, except as provided in this subsection (f).

(2) When the budget estimates required by § 19-4-202(b) for the fiscal year ending June 30, 2006, reflect projected growth in general revenues available for distribution equal to or in excess of one hundred twenty-one million dollars (\$121,000,000), then the tax rate levied in § 26-51-207 shall be reduced or expire in accordance with this subsection (f).

(3)(A) When the budget estimates required by § 19-4-202(b) for the fiscal year ending June 30, 2006, reflect projected growth in general revenues available for distribution equal to or in excess of one hundred fifty-six million dollars (\$156,000,000), then the tax levied in § 26-51-207 shall expire for tax years beginning on and after January 1, 2005.

(B) When the budget estimates required by § 19-4-202(b) for the fiscal year ending June 30, 2006, reflect projected growth in general revenues available for distribution equal to or in excess of one hundred thirty-nine million dollars (\$139,000,000) but less than one hundred fifty-six million dollars (\$156,000,000), then the tax rate levied in § 26-51-207 shall be reduced to one percent (1%) for tax years beginning in calendar year 2005 and for subsequent years.

(C) When the budget estimates required by § 19-4-202(b) for the fiscal year ending June 30, 2006, reflect projected growth in general revenues available for distribution equal to or in excess of one hundred twenty-one million dollars (\$121,000,000) but less than one hundred thirty-nine million dollars (\$139,000,000), then the tax rate levied in § 26-51-207 shall be reduced to two percent (2%) for tax years beginning in calendar year 2005 and for subsequent years.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that revenue available for the support of necessary state services has declined significantly as a result of the nationwide economic slowdown; that without additional revenue some state services will be reduced or eliminated; that some Arkansas residents will suffer as a result of service reductions or cuts; and that this bill will provide the necessary revenue to avoid state service reductions or cuts. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/ Ferguson

APPROVED: 5/8/2003

Synar Project Officer State Assignments

Center for Substance Abuse Prevention (CSAP)

Division of State and Community Systems Development (DSCSD)

State and Community Systems Development Branch

Synar Project Officer	State
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